

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Kelly Lyon	Team: Squad #10	CCRB Case #: 202000690	<input checked="" type="checkbox"/> Force <input type="checkbox"/> Discourt. <input type="checkbox"/> U.S. <input checked="" type="checkbox"/> Abuse <input type="checkbox"/> O.L. <input type="checkbox"/> Injury	
Incident Date(s) Sunday 01/26/2020 3:45 AM	18 Mo. SOL 07-26-2021	EO SOL 03-12-2022	Location of Incident: █ East 29th Street	Precinct: 67
Date/Time CV Reported Sun, 01/26/2020 10:22 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Sun, 01/26/2020 10:22 PM	

Complainant/Victim	Type	Home Address
1. J █ R █	Comp/Victim	█ East 21st Street Apt. █ Brooklyn NY 11226

Witness(es)	Home Address
1. S █ Unknown	Unknown

Subject Officer(s)	Shield	TaxID	Command
1. POM J █ Bautista	00113	954534	INT CIS
2. POM S █ R █	█	█	INT CIS
3. POM D █ D █	█	█	INT CIS

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. LT J █ G █	█	█	067 PCT
2. POM N █ S █	█	█	067 PCT
3. SGT D █ G █	█	█	INT CIS

Officer(s)	Allegation	Investigator Recommendation
A . POM S █ R █	Abuse of Authority: Police Officer S █ R █ stopped the vehicle in which J █ R █ was an occupant.	A . Unsubstantiated
B . POM D █ D █	Abuse of Authority: Police Officer D █ D █ stopped the vehicle in which J █ R █ was an occupant.	B . Unsubstantiated
C . POM J █ Bautista	Abuse of Authority: Police Officer J █ Bautista stopped the vehicle in which J █ R █ was an occupant.	C . Unsubstantiated
D . POM S █ R █	Force: Police Officer S █ R █ pointed his gun at J █ R █	D . Unsubstantiated
E . POM D █ D █	Force: Police Officer D █ D █ pointed his gun at J █ R █	E . Unsubstantiated
F . POM J █ Bautista	Force: Police Officer J █ Bautista pointed his gun at J █ R █	F . Unsubstantiated
G . POM S █ R █	Force: Police Officer S █ R █ used physical force against J █ R █	G . Exonerated
H . POM S █ R █	Abuse of Authority: Police Officer S █ R █ frisked J █ R █	H . Exonerated
I . POM S █ R █	Abuse of Authority: Police Officer S █ R █ searched J █ R █	I . Exonerated
J . POM S █ R █	Abuse of Authority: Police Officer S █ R █ searched the vehicle in which J █ R █ was an occupant.	J . Exonerated
K . POM D █ D █	Abuse of Authority: Police Officer D █ D █ searched the vehicle in which J █ R █ was an occupant.	K . Exonerated

Officer(s)	Allegation	Investigator Recommendation
L . POM J ■■■■ Bautista	Abuse of Authority: Police Officer J ■■■■ Bautista searched the vehicle in which J ■■■■ R ■■■■ was an occupant.	L . Exonerated
M . POM S ■■■■ R ■■■■	Other Possible Misconduct Noted: Police Officer S ■■■■ R ■■■■ improperly used his body-worn camera according to Patrol Guide Procedure 212-123.	M . Other Possible Misconduct
N . POM D ■■■■ D ■■■■	Other Possible Misconduct Noted: Police Officer D ■■■■ D ■■■■ improperly used his body-worn camera according to Patrol Guide Procedure 212-123.	N . Other Possible Misconduct
O . POM J ■■■■ Bautista	Other Possible Misconduct Noted: Police Officer J ■■■■ Bautista improperly used his body-worn camera according to Patrol Guide Procedure 212-123.	O . Other Possible Misconduct
P . POM D ■■■■ D ■■■■	Other Possible Misconduct Noted: Police Officer D ■■■■ D ■■■■ failed to prepare a memo book entry as required.	P . Other Possible Misconduct

Case Summary

On January 26, 2020, J [REDACTED] R [REDACTED] filed this complaint with the CCRB online.

On January 26, 2020, at approximately 3:45 a.m., in the vicinity of 458 East 29th Street in Brooklyn, Mr. R [REDACTED] was driving home when PO S [REDACTED] R [REDACTED] PO D [REDACTED] D [REDACTED] and PO J [REDACTED] Bautista of the Intel-Criminal Intel Section (Command 318) pulled him over (**Allegation A, B, and C: Abuse of Authority – Vehicle stop, unsubstantiated**). PO N [REDACTED] S [REDACTED] and Lieutenant J [REDACTED] G [REDACTED] of the 67th Precinct and Sgt. D [REDACTED] G [REDACTED] of the Intelligence Section arrived in a separate vehicle soon after. PO R [REDACTED] PO D [REDACTED] and PO Bautista allegedly approached Mr. R [REDACTED] with their guns pointed (**Allegations D, E, and F: Force – Gun pointed, unsubstantiated**). Officers instructed Mr. R [REDACTED] to step out of the vehicle multiple times and he initially refused. PO R [REDACTED] grabbed Mr. R [REDACTED] and allegedly pulled or dragged him out of the vehicle (**Allegation G: Force – Physical force, exonerated**). Once Mr. R [REDACTED] was outside of the vehicle PO R [REDACTED] frisked him (**Allegation H: Abuse of Authority – Frisk, exonerated**) and allegedly searched his pockets (**Allegation I: Abuse of Authority – Search (of person), exonerated**). PO R [REDACTED] PO D [REDACTED] and PO Bautista then searched the vehicle (**Allegations J, K, and L: Abuse of Authority – Vehicle search, exonerated**).

PO R [REDACTED] PO D [REDACTED] and PO Bautista activated their body-worn cameras at least thirty seconds after engaging with Mr. R [REDACTED] (**Allegations M, N, and O: Other Possible Misconduct – Improper use of body-worn camera**). PO D [REDACTED] failed to prepare a memo book entry (**Allegation P: Other Possible Misconduct – Failure to prepare a memo book entry**).

This incident resulted in one summons for possession of marijuana (**BR 17**). No other summonses were issued.

There were six body-worn camera videos (**BR 01, BR 02, BR 03, BR 04, BR 05, and BR 06**; *videos* and **BR 07 and BR 08**; *summaries*). Relevant portions are discussed below.

Findings and Recommendations

Allegation (A) Abuse of Authority: Police Officer S [REDACTED] R [REDACTED] stopped the vehicle in which J [REDACTED] R [REDACTED] was an occupant.

Allegation (B) Abuse of Authority: Police Officer D [REDACTED] D [REDACTED] stopped the vehicle in which J [REDACTED] R [REDACTED] was an occupant.

Allegation (C) Abuse of Authority: Police Officer J [REDACTED] Bautista stopped the vehicle in which J [REDACTED] R [REDACTED] was an occupant.

Allegation (D) Force: Police Officer S [REDACTED] R [REDACTED] pointed his gun at J [REDACTED] R [REDACTED]

Allegation (E) Force: Police Officer D [REDACTED] D [REDACTED] pointed his gun at J [REDACTED] R [REDACTED]

Allegation (F) Force: Police Officer J [REDACTED] Bautista pointed his gun at J [REDACTED] R [REDACTED]

It was undisputed that PO R [REDACTED] PO D [REDACTED] and PO Bautista stopped Mr. R [REDACTED] for speeding. Whether Mr. R [REDACTED] was speeding was disputed.

Mr. R [REDACTED] consistently stated (**BR 09, BR 10, and BR 11**) that he was driving home in a residential area and was pulled over by an unmarked police vehicle. Another unmarked vehicle arrived and parked behind Mr. R [REDACTED] vehicle. PO R [REDACTED] and either PO D [REDACTED] or PO Bautista approached with their guns drawn and pointed for approximately 10 to 12 seconds and told Mr. R [REDACTED] to put his hands up. PO R [REDACTED] approached Mr. R [REDACTED] driver's side window, asked for his ID, and informed him that he was speeding. Mr. R [REDACTED] stated that he was not speeding. Mr. R [REDACTED] added during his interview that he could not have been speeding because there had been a vehicle driving in front of him and the belt in his vehicle was broken.

PO R [REDACTED] (**BR 12**), PO D [REDACTED] (**BR 13**), PO Bautista (**BR 14**) and Sgt. G [REDACTED] (**BR 15**) consistently stated that Mr. R [REDACTED] was stopped because he was speeding. PO R [REDACTED] and Sgt. G [REDACTED] both stated that they personally observed Mr. R [REDACTED] speeding and PO D [REDACTED] and PO Bautista did not recall seeing it themselves. There was no discussion amongst the officers about stopping Mr. R [REDACTED] and neither Sgt. G [REDACTED] nor Lieutenant G [REDACTED] issued any instructions about stopping Mr. R [REDACTED].

PO R [REDACTED] PO D [REDACTED] and PO Bautista pulled Mr. R [REDACTED] over and approached the vehicle. PO R [REDACTED] went to the driver's window, PO D [REDACTED] went to the rear door on the driver's side, and PO Bautista went to the passenger side. Sgt. G [REDACTED] stood near the driver's side. Neither PO R [REDACTED] PO D [REDACTED] nor PO Bautista recalled pulling out their firearms as they were approaching Mr. R [REDACTED] vehicle. Sgt. G [REDACTED] did not remember seeing PO R [REDACTED] PO D [REDACTED] and PO Bautista pull out their firearms either.

PO Bautista stated (**BR 14**) that he only issued Mr. R [REDACTED] a warning for speeding because they were in a rush to get to the next job.

None of the officer's body-worn camera videos captured their initial approach to Mr. R [REDACTED] vehicle.

Due to inconsistent statements regarding Mr. R [REDACTED] speeding and regarding PO R [REDACTED] PO D [REDACTED] and PO Bautista unholstering and pointing their guns, and due to a lack of video evidence of this point of the incident, the investigation was unable to come to a preponderance of evidence as to whether the vehicle stop was justifiable and as to whether any officer unholstered or pointed their gun. It is therefore recommended that **Allegations A, B, C, D, E, and F** be *unsubstantiated*.

Allegation (G) Force: Police Officer S [REDACTED] R [REDACTED] used physical force against J [REDACTED] R [REDACTED]

It was undisputed that PO R [REDACTED] asked Mr. R [REDACTED] to step out of the vehicle multiple times and then placed his hands onto Mr. R [REDACTED] hands.

Mr. R [REDACTED] consistently stated (**BR 09, BR 10, and BR 11**) that that PO R [REDACTED] and another officer asked him to exit the vehicle at least three times. PO R [REDACTED] opened Mr. R [REDACTED] driver's side door, grabbed him by the shoulders and arms, and tried to pull him out of the vehicle. PO R [REDACTED] instructed Mr. R [REDACTED] to take off his seatbelt and PO D [REDACTED] reached in and unbuckled Mr. R [REDACTED] seatbelt. Mr. R [REDACTED] experienced some pain from being pulled out of the vehicle but did not observe any bruises or seek medical treatment after the incident. In his online complaint (**BR 09**) and his phone statement (**BR 10**) Mr. R [REDACTED] described being dragged out of the vehicle.

PO R [REDACTED] stated (**BR 12**) that he politely asked Mr. R [REDACTED] to step out five to six times, and he refused several times. PO R [REDACTED] placed his hands onto Mr. R [REDACTED] hands to guide him out of the vehicle if he was not going to come voluntarily and for safety reasons. Mr. R [REDACTED] did come out of the vehicle on his own and PO R [REDACTED] did not recall pulling him.

PO D [REDACTED] (**BR 13**) and Sgt. G [REDACTED] (**BR 15**) consistently described PO R [REDACTED] placing his hands onto Mr. R [REDACTED] hands and Mr. R [REDACTED] exiting the vehicle on his own without being pulled by PO R [REDACTED] PO Bautista (**BR 14**) did not recall seeing PO R [REDACTED] pull Mr. R [REDACTED] out of the vehicle, however, he was on the opposite side of the vehicle.

PO R [REDACTED] body-worn camera footage (**BR 02; video and BR 07; summary**) shows PO R [REDACTED] grabbing Mr. R [REDACTED] hands at 1:15 minutes. At 1:27 minutes, Mr. R [REDACTED] asks, "Why are you pulling me?" PO R [REDACTED] asks Mr. R [REDACTED] to step out multiple times and says, "Step out of the car or you're going to be placed in handcuffs." Mr. R [REDACTED] says, "I'mma step out the car, ok." At 1:55 minutes, Mr. R [REDACTED] stands up and exits the vehicle.

Although Mr. R [REDACTED] described being dragged and pulled out of the vehicle, the investigation is crediting PO R [REDACTED] statement that he placed his hands on top of Mr. R [REDACTED] hands to guide him out of the vehicle because the body-worn camera footage shows PO R [REDACTED] holding Mr. R [REDACTED] hands and Mr. R [REDACTED] apparently standing up without any indication of excessive pulling.

Patrol Guide procedure 221-01 (**BR 16**) states that force may be used when it is reasonable to place a person in custody or to prevent escape from custody. Any application of force must be reasonable under the circumstance and the following should be considered in determining whether it is reasonable: The nature and severity of the crime/circumstance, actions taken by the subject, duration of the action, immediacy of perceived threat or harm to the subject, MOS, or bystanders, whether the subject is actively resisting custody, whether the subject is attempting to evade arrest

by flight, number of subjects in comparison to number of MOS, size, age, and condition of subject compared to that of the MOS, subject's violent history, presence of hostile crowd or agitators, and whether the subject is apparently under the influence of stimulants/narcotics.

Because Mr. R [REDACTED] did not obey multiple lawful orders to step out of his vehicle, it was reasonable for PO R [REDACTED] to place his hands onto Mr. R [REDACTED] hands and use minimal force necessary to guide him out of the vehicle. It is therefore recommended that **Allegation G** be *exonerated*.

Allegation (H) Abuse of Authority: Police Officer S [REDACTED] R [REDACTED] frisked J [REDACTED] R [REDACTED]

Allegation (I) Abuse of Authority: Police Officer S [REDACTED] R [REDACTED] searched J [REDACTED] R [REDACTED]

Allegation (J) Abuse of Authority: Police Officer S [REDACTED] R [REDACTED] searched the vehicle in which J [REDACTED] R [REDACTED] was an occupant.

Allegation (K) Abuse of Authority: Police Officer D [REDACTED] D [REDACTED] searched the vehicle in which J [REDACTED] R [REDACTED] was an occupant.

Allegation (L) Abuse of Authority: Police Officer J [REDACTED] Bautista searched the vehicle in which J [REDACTED] R [REDACTED] was an occupant.

It was undisputed that PO R [REDACTED] frisked Mr. R [REDACTED] after he exited the vehicle. It was also undisputed that marijuana was recovered from Mr. R [REDACTED] glovebox and the vehicle was searched. The search of Mr. R [REDACTED] pockets was disputed.

Mr. R [REDACTED] consistently stated (**BR 09**, **BR 10**, and **BR 11**) that after he exited the vehicle, PO R [REDACTED] took him to the rear and frisked his entire body and entered his pockets. Mr. R [REDACTED] did not remember which pockets he went into and did not recall him removing anything from his pockets.

Mr. R [REDACTED] faced away from the vehicle as officers searched his vehicle. Mr. R [REDACTED] could hear them searching the rear, trunk, center console, and glove box. PO Bautista then walked over to Mr. R [REDACTED] and flashed a closed jar in front of him, said he found marijuana, and that Mr. R [REDACTED] was getting a summons. PO Bautista said he found the jar in the vehicle. Mr. R [REDACTED] did not get a good look at the jar and could not smell the marijuana from the jar. The jar did not belong to Mr. R [REDACTED] and he was not aware that there was ever marijuana in his vehicle.

Mr. R [REDACTED] stated to the CCRB that no one had been smoking marijuana inside of his vehicle. Mr. R [REDACTED] did not smoke marijuana that day and no one who had been a passenger smoked marijuana prior to entering Mr. R [REDACTED] vehicle.

Mr. R [REDACTED] received summons #4447798541 for unlawful possession of marijuana (**BR 17**).

PO R [REDACTED] stated (**BR 12**) that he smelled strong odor of marijuana coming from Mr. R [REDACTED] vehicle. PO R [REDACTED] did not recall whether he smelled marijuana before Mr. R [REDACTED] opened his window, he did not recall whether it smelled burned or fresh, and he could not tell which part of the vehicle it was coming from. After Mr. R [REDACTED] stepped out of the vehicle, PO R [REDACTED] patted Mr. R [REDACTED] down. PO R [REDACTED] typically patted down the waist and legs. PO R [REDACTED] did not recall entering Mr. R [REDACTED] pockets. Afterward, PO R [REDACTED] searched the driver's side of Mr. R [REDACTED] vehicle.

PO D [REDACTED] (**BR 13**), PO Bautista (**BR 14**), and Sgt. G [REDACTED] (**BR 15**) consistently described smelling a strong odor of marijuana as they approached the vehicle. PO Bautista searched the front passenger seat area of the vehicle and found marijuana in a little plastic container in the glove box. PO D [REDACTED] searched the trunk of the vehicle. PO Bautista issued Mr. R [REDACTED] the summons for unlawful possession of marijuana and prepared a voucher (**BR 25**).

PO D [REDACTED] body-worn camera footage (**BR 01; video** and **BR 07; summary**) shows PO R [REDACTED] frisking Mr. R [REDACTED] from 1:55 minutes to 2:15 minutes. It is not apparent whether PO R [REDACTED] enters Mr. R [REDACTED] jacket or pockets.

PO R [REDACTED] body-worn camera footage (**BR 02; video** and **BR 07; summary**) shows PO R [REDACTED] searching the driver's side of Mr. R [REDACTED] vehicle from 2:22 minutes to 5:28 minutes. From 5:35 minutes to 6:28 minutes, PO R [REDACTED] searches the trunk with PO D [REDACTED]

PO Bautista's body-worn camera footage (**BR 03**; *video* and **BR 08**; *summary*) shows PO Bautista searching the passenger side of the vehicle starting at 2:18 minutes. At 2:37 minutes, PO R■■■■ says, "Car smells like marijuana," and PO Bautista says, "It's all over the floor." Starting at 2:52 minutes, PO Bautista opens the glove box and removes a small round container. PO Bautista says, "There's bud right here." PO Bautista removes the container of marijuana from the vehicle.

Although Mr. R■■■■ stated that he did not know that there was marijuana in his vehicle and said no one had smoked inside the vehicle, the investigation is crediting the officers' statements that the vehicle had an odor of marijuana due to PO Bautista recovering the marijuana and vouching it. Although supervisors were on scene, they did not give any instructions or orders to any officer therefore no allegations were pleaded against Sgt. G■■■■ or Lieutenant G■■■■.

In *People v. Chestnut*, 43 A.D.2d 260 (1974) (**BR 18**), the court found that the smell of marijuana smoke, with nothing more, can be sufficient to provide police officers with probable cause to search a vehicle and its occupants.

Because PO R■■■■, PO D■■■■, and PO Bautista smelled marijuana coming from the vehicle it was permissible for PO R■■■■ to frisk and search Mr. R■■■■ and it was also permissible for P O R■■■■, PO D■■■■, and PO Bautista to search Mr. R■■■■ vehicle. It is therefore recommended that **Allegations H, I, J, K, L be exonerated.**

Allegation (M) Other Possible Misconduct Noted: Police Officer S■■■■, R■■■■ improperly used his body-worn camera according to Patrol Guide Procedure 212-123.

Allegation (N) Other Possible Misconduct Noted: Police Officer D■■■■, D■■■■ improperly used his body-worn camera according to Patrol Guide Procedure 212-123.

Allegation (O) Other Possible Misconduct Noted: Police Officer J■■■■, Bautista improperly used his body-worn camera according to Patrol Guide Procedure 212-123.

It was undisputed that PO R■■■■, PO D■■■■, and PO Bautista activated their body-worn cameras at least thirty seconds after engaging with Mr. R■■■■.

PO R■■■■ body-worn camera footage (**BR 02**; *video* and **BR 07**; *summary*), PO D■■■■ body-worn camera footage (**BR 01**; *video* and **BR 07**; *summary*), and PO Bautista's body-worn camera footage (**BR 03**; *video* and **BR 08**; *summary*) all open with the officers standing outside of Mr. R■■■■ vehicle. Mr. R■■■■ window his down, his hands are up, and he appears to be speaking to PO R■■■■.

PO R■■■■ stated (**BR 12**) that he waited to activate his body-camera until he was at the vehicle, opposed to prior to approaching the vehicle, because it was a safety hazard.

PO D■■■■ stated (**BR 13**) that he waited to turn his body-worn camera on until he was standing at Mr. R■■■■ rear passenger door because he was waiting until a safe moment to look down and engage the camera.

PO Bautista stated (**BR 14**) that he turned on his body-worn camera while standing by the passenger side of the vehicle. PO Bautista did not provide an explanation as to why he did not activate his camera sooner.

Patrol Guide procedure 212-123 (**BR 19**) states that it is mandatory to activate the body-worn camera prior to engaging in or assisting another officer with a vehicle stop.

Because PO R■■■■, PO D■■■■, and PO Bautista activated their body-worn cameras after engaging with Mr. R■■■■ during a vehicle stop it is recommended that Allegations M, N, and O be closed as *other possible misconduct noted*.

Allegation (P) Other Possible Misconduct Noted: Police Officer D■■■■, D■■■■ failed to prepare a memo book entry as required.

It was undisputed that PO D■■■■ participated in stopping Mr. R■■■■ and searching his vehicle and did not prepare a memo book entry (**BR 20**).

PO D■■■■ stated (**BR 13**) that he did not prepare a memo book entry because he forgot.

Patrol Guide procedure 212-08 (**BR 21**) states that all members of service below the rank of

captain must prepare an entry in an activity log recording enforcement action.

Because PO D [REDACTED] did not prepare a memo book entry documenting his enforcement action during this incident it is recommended that **Allegation P** be closed as *other possible misconduct noted*.

Civilian and Officer CCRB Histories

- Mr. R [REDACTED] has been named a victim in one additional CCRB complaint and 18 allegations (**BR 22**).
 - 202001196 involves allegations of refusals to provide names and shield numbers, vehicle search, refusal to take a civilian complaint, refusal to obtain medical treatment, a threat of arrest, a threat to search Mr. R [REDACTED] home, and a discourteous statement. To date this investigation is still open.
- PO R [REDACTED] has been a member of service for seven years and named a subject in seven additional CCRB complaints and 28 allegations, none of which were substantiated.
 - 202002102 involved allegations of a vehicle stop and vehicle search. To date this investigation is still open.
 - 202002134 involved allegations of a gun pointed, a frisk, and a search of person. To date this investigation is still open.
 - 202006527 involved allegations of a gun pointed, and a vehicle stop and search. To date this investigation is still open.
- PO D [REDACTED] has been a member of service for seven years and named a subject in five additional CCRB complaints and 11 allegations, none of which were substantiated.
 - PO D [REDACTED] CCRB history presents no apparent pattern pertinent to this investigation.
- PO Bautista has been a member of service for seven years and named a subject in seven additional CCRB complaints and 23 allegations, none of which were substantiated.
 - 202002102 involved allegations of a vehicle stop and search. To date this investigation is still open.
 - 202002134 involved allegations of a gun pointed. To date this investigation is still open.
 - 202006527 involved an allegation of a vehicle search. To date this investigation is still open.
 - 202006753 involved an allegation of a gun pointed and vehicle search. To date this investigation is still open.

Mediation, Civil and Criminal Histories

- This complaint was unsuitable for mediation.
- As of January 7, 2020, the New York City Office of the Comptroller has no Notice of Claim filed in regard to this incident (**BR 23**).
- According to the Office of Court Administration (OCA), between September 10, 2015 and March 26, 2021, Mr. R [REDACTED] was convicted of disorderly conduct (twice) and driving without a license (twice) and he received varying amounts of fines, imprisonment, and conditional discharges (**BR 24**).

Squad No.: 10

Investigator: Kelly Lyon
Signature

Inv. Kelly Lyon
Print Title & Name

5/18/2021
Date

Squad Leader:	<u>Eric Rigie</u>	<u>IM Eric Rigie</u>	<u>5/18/2021</u>
	Signature	Print Title & Name	Date

Reviewer:	<u></u>	<u></u>	<u></u>
	Signature	Print Title & Name	Date